

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed April 4, 2000

No. 98-5530

Brett C. Kimberlin,
Appellee

v.

J. Michael Quinlan, et al.,
Appellants

Appeal from the United States District Court
for the District of Columbia
(No. 90cv01549)

On Appellants' Petition for Rehearing En Banc

BEFORE: Edwards, Chief Judge; Silberman, Williams,
Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel and
Garland, Circuit Judges.

O R D E R

Appellants' petition for rehearing en banc and the response
thereto have been circulated to the full court. The taking of

a vote was requested. Thereafter, a majority of the judges of the court in regular, active service did not vote in favor of the petition. Upon consideration of the foregoing, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

Circuit Judges Sentelle and Garland did not participate in the matter.

A statement of Circuit Judge Henderson dissenting from the denial of rehearing en banc is attached.

Henderson, Circuit Judge, dissenting:

I dissent from the denial of the appellants' petition for rehearing en banc for the reasons set forth in my panel dissent. See *Kimberlin v. Quinlan*, 199 F.3d 496, 504-06 (D.C. Cir. 1999). Because the record, viewed in the light most favorable to the appellee, does not establish a constitutional violation, the appellants are entitled to qualified immunity and we should therefore reverse the district court flat out. See *Siegert v. Gilley*, 500 U.S. 226 (1991). Instead we remand for the appellee to resume his quest for evidence of

an imagined wrong. So doing, we waste the time and resources of all involved.